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EXAMINER	
SHELEHEDA, JAMES R	

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2623	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	09/760,242	DAVIDSON, ROBERT J.	
	Examiner	Art Unit	
	James Sheleheda	2623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *29 March 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-33* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-33* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 03/29/07 have been fully considered but they are not persuasive.

a. On pages 9-11, of applicant's response, applicant argues that Downs fails to disclose "encoding the portable digital storage module" as claimed, as Downs merely encodes the "content" itself and not the module.

In response, Downs specifically discloses wherein the portable device will have computer software, i.e. a "User Player Application" stored thereon for controlling access to the entertainment media (column 7, lines 11-22 and column 11, lines 30-55). Thus the digital storage module (disclosed in Chung) is encoded with access instructions (i.e. a computer program) controlling access to the entertainment media (a User Player Application, as disclosed by Downs, to restrict access to the content). Thus, applicant's arguments are not convincing.

Further, as indicated by applicant, all of the downloaded content disclosed by Downs is specifically encoded with access instructions (watermarking limiting which devices can utilize the content and how often; column 7, lines 30-54 and column 11, lines 30-55). Thus, the portable digital storage module is clearly encoded with access instructions corresponding to the entertainment media, as

the content, with is access instructions, are loaded into the module for secure storage and use. This clearly reads upon the claim limitations.

Finally, it is noted that applicant's specification merely recites that the "During purchase of the movie, purchase center 12 encodes personal movie storage module 10 with instructions..." with no specific structure as to how that "encoding" takes place whatsoever. Thus, applicant's arguments that Down's system fails to meet this limitation are simply not convincing.

b. In response to applicant's argument that Yamagata is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992).

In this case, Chung discloses a portable media player utilizing a removable digital storage device. Yamagata specifically discloses a removable digital storage device capable of providing high speed access.

As a removable storage device is clearly pertinent to portable media players *utilizing removable storage devices*, applicant's arguments are not convincing.

c. On pages 12-13, applicant argues that the means for protecting in Downs has not been shown to be equivalent to the disclosed structure.

In response, as indicated in (a) above, it is noted that there is no specific *structure* disclosed in applicant's specification in regards to a "means for protecting". The only specific mention of the "protecting" or "encoding" is provided on page 5, lines 28-31, which indicates that "During purchase of the movie, purchase center 12 encodes personal movie storage module 10 with instructions...". As Downs clearly discloses "encoding" the user's device with access instructions for the content, it clearly meets all of the limitations of the claim.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. Claims 1-5, 8, 16-21, 23-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chung (6,628,963) (of record) in view of Downs et al. (Downs) (6,226,618) (of record).

As to claim 1, while Chung discloses a method of portably handling entertainment media (column 1, lines 5-12) comprising:

storing entertainment media in a memory of a portable digital storage module (column 1, lines 37-40, column 2, line 56-column 3, line 20);

retrieving the entertainment media from the memory of the portable digital storage module with a digital format player device (Fig. 2; column 2, line 56-column 3, line20), he fails to specifically disclose encoding the portable digital storage module with access instructions corresponding to the entertainment media and retrieving the entertainment media in accordance with a permission granted by the access instructions.

In an analogous art, Downs discloses a content delivery system (see Figs. 1A-D) wherein digital content is downloaded onto a portable media player (column 6, lines 35-48) which is encoded with access instructions according to the entertainment media (column 11, lines 30-55) to allow retrieval of the entertainment media in accordance with a permission granted by the access information (column 11, lines 30-55) for the typical benefit of ensuring that the rights of content owners are secured in a digital content distribution system (column 1, lines 50-60 and column 2, lines 26-34).

It would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Chung's system to include encoding the portable digital storage module with access instructions corresponding to the entertainment media and retrieving the entertainment media in accordance with a permission granted by the access instructions, as taught by Downs, for the typical benefit of ensuring that the rights of content owners are secured in a digital content distribution system.

As to claim 2, Chung and Downs disclose wherein the storing step further comprises transferring a copy of the entertainment media from a purchase center into the memory of the portable digital storage module (electronic digital content stores; see Downs at column 10, lines 4-35).

As to claim 3, Chung and Downs disclose wherein the storing step further comprises downloading the entertainment media from a remotely located database (see Downs at column 10, lines 4-35).

As to claim 4, Chung and Downs disclose repeating the storing step to store two or more entertainment media into the memory of the portable digital storage module (downloading and storing a plurality of movie files; see Chung at column 1, lines 5-12, lines 37-40 and column 2, lines 55-62).

As to claim 5, Chung and Downs disclose wherein the retrieving step further comprises the player device including a personal movie player (portable multimedia player; see Chung at Figs. 1 and 2; column 1, lines 20-30).

As to claim 8, Chung and Downs disclose wherein the storing step and the retrieving step are performed in a broadband frequency format (MPEG format; see Chung at column 2, line 35 - column 3, line 11).

As to claim 16, while Chung discloses a portable digital media handling system (column 1, lines 5-12), comprising:

a system configured to receivingly engage a portable digital storage module in a data transfer relationship (column 1, lines 37-40, column 2, line 56-column 3, line 20), to operably store a user-selected entertainment media to the portable digital storage module (column 1, lines 37-40, column 2, line 56-column 3, line 20) and accessing the entertainment media by a digital format player device (Fig. 3; column 2, line 40-column 3, line 20), he fails to specifically disclose a purchase system and storing access instructions associated with the user-selected entertainment media to the portable digital storage module in order to prevent unauthorized access to the entertainment media by the digital format player device.

In an analogous art, Downs discloses a content delivery system (see Figs. 1A-D) wherein purchased digital content is downloaded onto a portable media player (column 6, lines 35-48) which is encoded with access instructions according to the entertainment media (column 11, lines 30-55) to allow retrieval of the entertainment media in accordance with a permission granted by the access information (column 11, lines 30-55) for the typical benefit of ensuring that the rights of content owners are secured in a digital content distribution system (column 1, lines 50-60 and column 2, lines 26-34).

It would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Chung's system to include a purchase system and storing access instructions associated with the user-selected entertainment media to the portable digital storage module in order to prevent unauthorized access to the

entertainment media by the digital format player device, as taught by Downs, for the typical benefit of ensuring that the rights of content owners are secured in a digital content distribution system.

As to claim 17, Chung and Downs disclose wherein the digital format player device includes a personal portable playback device (portable multimedia player; see Chung at Figs. 1 and 2; column 1, lines 20-30).

As to claim 18, Chung and Downs disclose wherein the purchase system makes a copy of the user-selected entertainment media from a database of entertainment media and transfers a copy to the portable digital storage module via a point of purchase module (see Downs at page 9, line 60-column 10, line 35 and column 6, lines 35-49).

As to claim 19, Chung and Downs disclose wherein the retrieving step is characterized by permission being granted to the digital format player to access the entertainment media a finite number of times (see Downs at column 20, lines 42-50 and column 61).

As to claim 20, Chung and Downs disclose wherein the retrieving step is characterized by permission being granted to the digital format player to access the entertainment media for a finite period of time (see Downs at column 61).

As to claim 21, Chung and Downs disclose wherein at least a portion of a first entertainment media and at least a portion of a second entertainment media are stored in a common memory location (see Chung at column 1, lines 37-40, column 2, line 56-column 3, line 20).

As to claims 23, 28 and 31, while Chung and Downs disclose a memory, they fail to specifically disclose a disc drive data storage device.

The examiner takes Official Notice that it was notoriously well known in the art at the time of invention by applicant to utilize a disc drive storage device to store data, which are widely known and used to provide long term storage for data, for the typical benefit of taking advantage of a well-known storage device for long-term storage.

It would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Chung and Downs' system to include a disc drive data storage device for the typical benefit of taking advantage of a well-known storage device for long-term storage.

As to claim 24, Chung and Downs discloses wherein the storing step is characterized by the entertainment media comprising audio data (see Chung at column 1, lines 6-14).

As to claim 25, Chung and Downs disclose wherein the storing step is characterized by the entertainment media comprising video data (see Chung at column 1, lines 6-14).

As to claim 26, Chung and Downs disclose wherein the encoding step is characterized by a predetermined association between a user-selected purchase price for the entertainment media and the corresponding access instructions (see Downs at column 61).

As to claim 27, Chung and Downs disclose wherein the retrieving step is characterized by permission being granted only to one or more predetermined digital format player devices (see Downs at column 11, lines 40-55).

As to claim 29, Chung and Downs disclose wherein the database comprises a cable/satellite television network (see Downs at column 8, lines 42-53).

As to claim 30, Chung and Downs disclose wherein the point of purchase module comprises a cable/satellite receiver (see Downs at column 6, lines 36-48).

As to claim 32, Chung and Downs disclose automatically deleting the entertainment media from the memory in relation to the permission expiring (see Downs at column 11, lines 40-49).

4. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chung and Downs as applied to claim 1 above, and further in view of Gibson et al. (Gibson) (5,557,596) (of record).

As to claim 22, while Chung and Downs disclose storing the entertainment media, they fail to specifically disclose an atomic resolution storage device.

In an analogous art, Gibson discloses the use of an atomic resolution storage device (Figs. 1A-C; column 1, line 63-column 2, line 33) as opposed to conventional storage technologies (column 1, lines 14-21) for the typical benefit of providing ultra-high density storage with fast access times and high data rates (column 1, lines 52-62).

It would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Chung and Downs' system to include wherein the memory is characterized as an atomic resolution storage device, as taught by Gibson, for the typical benefit of taking advantage of the benefits provided by an atomic resolution storage device, such as fast access times and high data rates combined with ultra-high density storage.

5. Claims 9, 10 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chung in view of Yamagata et al. (Yamagata) (4,908,793) (of record) and Downs.

As to claim 9, while Chung discloses a portable storage module (column 2, lines 55-62 and column 1, lines 37-40) comprising:

an enclosure that is removably connectable to a digital format player device (Fig. 3; column 2, lines 56-62) in a data transfer relationship (see Fig. 3; column 2, lines 50-60 and column 1, lines 34-40 and lines 56-62),

a memory in the enclosure for storing and retrieving data (column 2, lines 50-62), he fails to specifically disclose a controller in the enclosure for executing instructions stored in the memory for granting the digital format player device access to data stored in the memory.

In an analogous art, Yamagata discloses wherein a memory component (100) comprises controller logic (disk control circuit 9) for operating the storage device and communicating between the memory component and the communications interface (column 2, lines 64-65, column 3, lines 22-26, and column 4, lines 1-4), for the typical benefit of having the ability to control the read and write operations of the memory device (column 2, lines 64-65, and column 4, lines 1-4).

Additionally, in an analogous art, Downs discloses a content delivery system (see Figs. 1A-D) wherein digital content is downloaded onto a portable media player (column 6, lines 35-48) which is encoded with access instructions according to the entertainment media (column 11, lines 30-55) to allow retrieval of the entertainment media in accordance with a permission granted by the access information (column 11, lines 30-55) for the typical benefit of ensuring that the rights of content owners are secured in a digital content distribution system (column 1, lines 50-60 and column 2, lines 26-34).

It would have been obvious to one of ordinary skill in the art at the time of invention to modify Chung's system to include a controller in the enclosure for executing

instructions stored in the memory, as taught by Yamagata, for the typical benefit of having the ability to control the read and write operations of the memory device in a communications storage medium.

Additionally, it would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Chung and Yamagata's system to include instructions for granting the digital format player device access to data stored in the memory, as taught by Downs, for the typical benefit of ensuring that the rights of content owners are secured in a digital content distribution system.

As to claim 10, Chung, Yamagata and Downs disclose a communication interface (inherently present to allow connection between the player and memory) subject to the controller (disk control circuit 9) in transferring data from the memory to the digital format player device (see Yamagata at column 2, lines 64-65, column 3, lines 22-26, and column 4, lines 1-4).

As to claim 15, Chung, Yamagata and Downs disclose wherein the memory is configured for subsequently storing data wherein different data was previously stored (see Chung at column 2, lines 56-62).

6. Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chung and Downs as applied to claim 1 above, and further in view of Yamagata.

As to claim 6, while Chung and Downs disclose wherein storing the digitally formatted movie further comprises providing the portable digital storage module with a communication interface (inherently present to allow the memory to interface and communicate with the player; see Chung at Fig. 1; column 2, lines 56-62), they fail to specifically disclose wherein the storage module has a power supply.

In an analogous art, Yamagata discloses a storage device (100) containing a communications interface (6) and being coupled to a power supply (power supply circuit 150 and battery 130) for the typical benefit of generating power necessary to allow the memory to record and reproduce information (column 2, lines 39-40).

It would have been obvious to one of ordinary skill in the art at the time of invention to modify Chung and Downs' system to include the storage module having a power supply, as taught by Yamagata, for the typical benefits of ensuring that an external memory device can generate power to record and reproduce information in the memory storage device.

As to claim 7, Chung, Downs and Yamagata disclose wherein the retrieving step is characterized by a controller logic executing the access instructions stored in the memory (see Chung at column 2, lines 50-62).

7. Claims 11-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chung, Yamagata and Downs as applied to claim 9 above, and further in view of Gibson.

As to claim 11, while Chung, Yamagata and Downs disclose a memory, they fail to specifically disclose wherein the memory is characterized as an atomic resolution storage device comprising:

a field emitter fabricated by semiconductor microfabrication techniques capable of generating an electron beam current; and

a storage medium in proximity to the field emitter and having a storage area in one of a plurality of states to represent the information stored in the storage area.

In an analogous art, Gibson discloses the use of an atomic resolution storage device (Figs. 1A-C; column 1, line 63-column 2, line 33) as opposed to conventional storage technologies (column 1, lines 14-21), the atomic resolution storage device comprising a field emitter fabricated by semiconductor micro-fabrication techniques capable of generating an electron beam current (see Gibson at column 2, line 65 - column 3, line 29), and a storage medium in proximity to the field emitter and having a storage area in one of a plurality of states to represent the information stored in the storage area (see Gibson at column 3, lines 1-5) for the typical benefit of providing ultra-high density storage with fast access times and high data rates (column 1, lines 52-62).

It would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Chung, Yamagata and Downs' system to include wherein the memory is characterized as an atomic resolution storage device comprising: a field emitter fabricated by semiconductor microfabrication techniques capable of generating an electron beam current; and a storage medium in proximity to the field emitter and having a storage area in one of a plurality of states to represent the

information stored in the storage area, as taught by Gibson, for the typical benefit of taking advantage of the benefits provided by an atomic resolution storage device, such as fast access times and high data rates combined with ultra-high density storage.

As to claim 12, Chung, Yamagata, Downs and Gibson disclose an effect being generated when the electron beam current bombards the storage area, wherein the magnitude is dependent on the state of said storage, and wherein storage data is read by measuring the magnitude of the effect (see Gibson at column 5, line 64 - column 6, line 10).

As to claim 13, Chung, Yamagata, Downs and Gibson disclose the atomic resolution storage module further comprising a plurality of storage areas on the storage medium, each storage area in one of a plurality of states to represent information stored in the storage area (see Gibson at column 5, line 64 – column 6, line 10), and a micro fabricated mover in the storage device for positioning various areas to be bombarded by the electron beam current (see Gibson at column 6, lines 2-10).

As to claim 14, Chung, Yamagata, Downs and Gibson disclose the atomic resolution storage module further comprising a plurality of said field emitters (see Gibson at column 2, line 65 - column 3, line 5), with each emitter fabricated by semiconductor micro fabrication techniques capable of generating an electron beam current (see Gibson at column 3, lines 5-20), with each emitter space apart, and with

each emitter being responsible for a number of storage areas such that said emitters can function in parallel to increase the data rate of the storage device (see Gibson at column 3, line 57 - column 4, line 20).

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

9. Claim 33 is rejected under 35 U.S.C. 102(e) as being anticipated by Downs.

As to claim 33, Downs discloses a digital media handling system (see Fig. 1A-D) comprising:

a portable digital storage module (column 11, lines 40-54); and

means for protecting entertainment media stored in the portable digital storage module from unauthorized access (Player application, 195; column 11, lines 30-55).

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

11. The following are suggested formats for either a Certificate of Mailing or Certificate of Transmission under 37 CFR 1.8(a). The certification may be included with all correspondence concerning this application or proceeding to establish a date of mailing or transmission under 37 CFR 1.8(a). Proper use of this procedure will result in such communication being considered as timely if the established date is within the required period for reply. The Certificate should be signed by the individual actually depositing or transmitting the correspondence or by an individual who, upon information and belief, expects the correspondence to be mailed or transmitted in the normal course of business by another no later than the date indicated.

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Please refer to 37 CFR 1.6(d) and 1.8(a)(2) for filing limitations concerning facsimile transmissions and mailing, respectively.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James Sheleheda whose telephone number is (571) 272-7357. The examiner can normally be reached on 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Kelley can be reached on (571) 272-7331. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

James Sheleheda
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JS

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PRIMARY PATENT EXAMINER